IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 530 of 2004
(Old No. 12511 of 1991)

Subhash Chandra Saxena
S/o Sri Radhey Shyam Saxena,
Resident of P.S. Kichha,
District Nainital. (Now Udham Singh Nagar)

…….. Applicant

Versus

State and 25 others

……. Respondents

Mr. Lokendra Dobhal, Advocate for the applicant.
Mr. M.K. Goyal, Advocate for the respondents.
Mr. G.S. Sandhu and Mr. P.S. Saun, A.G.A. for the State.

Hon. Prafulla C. Pant, J.

By means of this petition, moved under Section 482 of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), the petitioner Subhash Chandra Saxena has sought a direction that respondent Nos. 1 to 4 be made to handover possession of land in question and construction, if any, thereon be demolished.

2) Heard learned counsel for the parties and perused the papers on record.

3) Brief facts of the case are that in cirminal case Nol 636 of 1986, accused respondents Nirmal Pal, Guddu, Ashok, Pattu, Chandrapal, Patras, Matru, Prem, Balbir, Etwari, Mahendra Pal, Pyare Lal, Suresh, Masdayal, Ram Bhuj, Pan Singh, Nathu lal, Birbal, Smt. Reshma and Shravan Kumar were convicted under Section 447 of I.P.C., on 29.08.1989, by Munsif / Judicial Magistrate, Rudrapur, District Nainital

(Now Udham Singh Nagar). It appears that an appeal was filed against conviction by the respondents / convicts, which was registered as Criminal Appeal No. 102 of 1989, and the same was dismissed, after hearing the parties, on 14.05.1990 by the IV Additional Sessions Judge, Nainital. While, dismissing the appeal, instead of sentencing the convicts, as directed by the trial court, the appellate court censured the convicts (under Probation of Offenders Act, 1958), and further directed the convicts to handover possession of plot No. 763 / 1, measuring 3 bighas to Subhash Chandra Saxena (complainant) present petitioner. Said direction appears to have been passed under Section 456 of Cr.P.C. From the perusal of record, it is clear that complainant gave it in wrting on 17.01.1992, stating that he has been handed over possession of plot No. 673 / 1, measuring 3 bighas, in compliance of order relating to criminal case No. 636 of 1986. Perusal of the record further reveals that both the orders i.e. order of the trial court as well as that of the appellant court, clearly indicate that it was only plot No. 673 / 1, of which the possession was to be delivered to the petitioner under Section 456 of Cr.P.C.

4) Thereafter, it appears that on 20.12.1990, an order was obtained by the petitioner for handing over possession of plot No. 673 / 1 and also that of plot No. 675, whereby the Sr. Superintendent of Police was directed by the Munsif / Judicial Magistrate to get delivered possession of plot No. 673 / 1 as well as that of plot No. 675. This order, on the face of it is illegal and erroneous in law. There is no such plot number mentioned either in criminal case No. 636 of 1986 or the appeal arising out of the said criminal case. Assuming for a moment, that some other plots were

encroached upon by the respondents, that do not mean that in the garb of a particular criminal case, such directions can be issued by the Magistrate to the Sr. Superintendent of Police for such other plots.

5) Learned counsel for the petitioner argued that under Section 456 of Cr.P.C., the Magistrate can pass such order in respect of other plots also. I am unable to accept the contention of the learned counsel for the reason that the object of Section 456 of Cr.P.C. is to restore possession of the immovable property in respect of which a person is convicted. It does not permit the court to direct ejectment of a person from any property whatsoever.

6) From the perusal of the record of this petition, which appears to have been originally filed before the Allahabad High Court in the year 1991, the petitioner has sought interim orders on 20.05.1994 corrected vide order dated 18.10.1995, to get the respondents evicted from plot No. 675, measuring 14 bighas, which is a plot neither here nor there, relating to the proceedings in which the above named respondents were convicted.

7) For the reasons as discussed above, and in the circumstances, the direction sought in this petition under Section 482 of Cr.P.C., by the petitioner, is misconceived and cannot be allowed. Accordingly, the petition is dismissed. All interim order passed by this Court is these proceedings are hereby vacated. (All pending applications in this petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt. October 12, 2006.
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